IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA-10-0192

IN RE THE MARRIAGE OF:

MARGOT LUCKMAN HART,

APPELLANT,

v.

SCOTT L. HART,

APPELLEE.

APPELLANT'S BRIEF

On Appeal from the District Court of the
Fourth Judicial District of the State of Montana,
In and for the County of Missoula,
Before the Honorable Edward P. McLean.

Thorin A. Geist
P. Mars Scott Law Offices
P.O. Box 5988
Missoula, Montana 59806
Phone: (406) 327-0600
Fax: (406) 728-0948
Email: Thorin.Geist@PMarsScott.com
Attorney for the Appellant

Kenneth R. Dyrud
Dyrud Law Offices, P.C.
P.O. Box 9109
Missoula, Montana 59807
Phone: (406) 541-8400
Fax: (406) 541-8404
Email: KDyrud@Montana.com
Attorney for the Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES

MONTANA CASES

FOREIGN CASES

MONTANA RULES OF CIVIL PROCEDURE

TREATISES AND LEGAL ENCYCLOPEDIAS

ADMINISTRATIVE RULES

STATEMENT OF THE ISSUES

The Montana Supreme Court is asked to determine whether the District Court erred when it: (1) concluded that judicial admissions, which were not contrary to the issues that were before the District Court at the time they were made, precluded an award of back child support; (2) imposed sanctions for requesting back child support in light of the judicial admissions; and (3) ultimately held that neither party owed the other for back child support. The Montana Supreme Court is also asked to award attorney's fees and costs to the Appellant should she prevail in this appeal.

STATEMENT OF THE CASE

The Appellant appeals to the Montana Supreme Court from the District Court's June 23, 2009 *Order*: (1) denying her *Motion for Determination of Back Child and Medical Support Amount Due* on the basis that judicial admissions precluded an award of back child support; and (2) imposing sanctions for asserting a claim for back child support in light of the judicial admission. The Appellant respectfully requests that the June 23, 2009 *Order* be reversed and that the matter be remanded for a hearing.

The Appellant also appeals to the Montana Supreme Court from the District Court's March 3, 2010 *Findings of Fact, Conclusions of Law, and Order* which concluded that neither party owed the other for back child support. The Appellant

respectfully requests that the March 3, 2010 *Findings of Fact, Conclusions of Law, and Order* be reversed and that the matter be remanded for a hearing.

STATEMENT OF THE FACTS

On May 19, 1993, the Appellant, Margot Luckman Hart (hereinafter "Margot"), and the Appellee, Scott L. Hart (hereinafter "Scott"), entered into a *Marital and Property Settlement Agreement* in their dissolution of marriage proceeding before the Fourth Judicial District Court, Missoula County, Montana. In pertinent part, the *Settlement Agreement* provided that the parties two children, H.H. and T.H., would live primarily with Margot, that Scott would pay $150.00 per month in child support beginning on June 1, 1993[1], and that the parties would split the children's uninsured medical expenses equally. *Settlement Agreement* at § XII(A)-(C). Scott was almost never current on his child and medical support obligations and the residence of the children changed numerous times during the years following the parties' *Settlement Agreement.* Appendix 1 – June 23, 2009 *Order* at 2:3-16; *Transcript on Appeal* at 58:2-73:24; 99:22-100:2; 102:12-18;107:5-8;113:5-11;115:1-5.

One of the changes in the children's residential schedule was predicated upon Scott's October 30, 2000 *Motion to Amend Parenting Plan.* Scott's motion sought to amend the residential schedule of the children, but it failed to request the

[1] Scott later agreed to increase his child support obligation to $200.00 per month beginning on July 5, 1997. *Brief in Support of Motion for Determination of Back Child and Medical Support Amount Due* at 2:11-14.

modification of his child or medical support obligations. On December 12, 2001 the District Court issued its *Findings of Fact, Conclusions of Law, and Order* in which it granted Scott's motion, but failed to modify (or even address) Scott's child and medical support obligations.

In March of 2003, Scott suffered a catastrophic injury from which he began receiving social security disability benefits. Appendix 1– June 23, 2009 *Order* at 2:17-3:6. On February 15, 2008, Margot, as representative payee for H.H. and T.H., received a lump sum payment of $8,097.00 for each child and she began receiving dependent's benefits of $274.00 per month for each of the children. *Id* at 2:17-3:6.

On June 9, 2008, Margot filed her *Motion for Determination of Back Child and Medical Support Amount Due* in which she requested a determination of the child support and medical support amounts that were due as a result of Scott's sporadic payments on his child support and medical support obligations, the numerous changes in residences of the parties' children, and the recent receipt of SSD dependent benefits. June 9, 2008 *Motion for Determination of Back Child and Medical Support Amount Due* at 1:22-3:9.

Margot's motion was fully briefed by the parties and the District Court ultimately determined that: (1) a proposed finding of fact, which Margot submitted prior to a hearing on Scott's October 30, 2000 *Motion to Amend Parenting Plan*,

constituted a "judicial admission" that precluded an award of child support prior to 2001; (2) a statement made during a deposition, which was not admitted as evidence during a hearing on Scott's October 30, 2000 *Motion to Amend Parenting Plan*, constituted a "judicial admission" that precluded an award of medical support prior to November of 2000; (3) that Margot should pay $18,962.75 as a sanction for her pursuit of child and medical support prior to 2001; (4) that the social security disability dependent benefits would be credited first to the principle balance of any child support arrearage, and then to any accrued interest; and (5) that neither party owed the other for past due child or medical support for the children. Appendix 1 – June 23, 2009 *Order* at 4:8-13; Appendix 2 – March 3, 2010 *Findings of Fact, Conclusions of Law, and Order* at 5:12-19; 6:15-19; 7:1-20; 8:1-11; 9:19-20.

STANDARD OF REVIEW

I. Determinations of fact.

The Montana Supreme Court will "affirm the factual findings of a trial court sitting without a jury unless those findings are 'clearly erroneous.'" *Interstate Production Credit v. DeSaye*, 250 Mont. 320, 322, 820 P.2d 1285, 1287 (1991). The Montana Supreme Court has adopted a three-part test for determining whether a finding is clearly erroneous:

First, the Court will review the record to see if the findings are supported by substantial evidence.

Second, if the findings are supported by substantial evidence we will determine if the trial court has misapprehended the effect of evidence.

Third, if substantial evidence exists and the effect of the evidence has not been misapprehended the court may still find that a finding is "clearly erroneous" when, although there is evidence to support it, a review of the record leaves the court with the definite and firm conviction that a mistake has been committed.

Leichtfuss v. Dabney, 2005 MT 271, ¶ 20, 329 Mont. 129, 122 P.3d 1220 (citing *Interstate Production Credit,* 250 Mont. at 323, 820 P.2d at 1287 (internal citations and quotation marks omitted)).

The findings of fact must be based on substantial credible evidence and the District Court's decision will be upheld unless a clear abuse of discretion is shown. In re the Marriage of Dreesbach, 265 Mont. 216, 220-221, 875 P.2d 1018, 1021 (1994). The test for an abuse of discretion is whether the District Court acted "arbitrarily without employment of conscientious judgment or [if it] exceeded the bounds of reason resulting in substantial injustice." *In re the Marriage of Engen*, 1998 MT 153, ¶ 26, 289 Mont. 299, 961 P.2d 738. One acts arbitrarily if his actions are "seemingly at random or by chance" or as a "sudden, impulsive and seemingly unmotivated notion or action" and "unreasonable act of will." *Silva v. City of Columbia Falls*, 258 Mont. 329, 335, 852 P.2d 671, 675 (1993).

II. Conclusions of law.

The Montana Supreme Court reviews a District Court's conclusions of law

to determine whether "the court's interpretation of the law is correct." *Leichtfuss* at ¶ 21.

III. Sanctions.

The Montana Supreme Court reviews a District Court's findings of fact underlying a decision whether to award sanctions under Rule 11, M.R.Civ.P., to determine whether such findings are clearly erroneous. *Good Schools Missoula, Inc. v. Missoula County Public School Dist. No. 1*, 2008 MT 231, ¶ 16, 344 Mont. 374, 188 P.3d 1013. If the Montana Supreme Court determines that sanctions were warranted, the District Court's choice of sanction is reviewed for an abuse of discretion. *Id.*

SUMMARY OF THE ARGUMENT

The District Court concluded that Margot made judicial admissions which precluded an award of child support prior to 2001 and medical support prior to November of 2000. However, neither issue was before the District Court when the judicial admissions allegedly occurred and the judicial admissions therefore cannot satisfy the five-part rule that the Montana Supreme Court adopted in *Conagra, Inc. v. Nierenberg*, 2000 MT 213, ¶ 45, 301 Mont. 55, 7 P.3d 369 (specifically requiring that the judicial admission be contrary to an essential fact embraced in the theory of recovery or defense). As such, the Montana Supreme Court should reverse the District Court's conclusion Margot made judicial

admissions which precluded an award of child support prior to 2001 and medical support prior to November of 2000.

Furthermore, one of the judicial admissions that Margot allegedly made was in the form of a proposed finding of fact, which the District Court never adopted. The Montana Supreme Court is urged to adopt a standard, similar to other jurisdictions, whereby judicial admissions are not permitted to occur in proposed findings of fact where the District Court does not adopt the proposed finding at issue.

The District Court sanctioned Margot, in light of her judicial admissions, for asserting a claim to child support prior to 2001 and for medical support prior to November of 2000. However, neither claim was frivolous nor was it interposed for an improper purpose. As such, the Montana Supreme Court should reverse the District Court's imposition of sanctions.

The District Court's concluded that neither party owed the other for back child or medical support. However, the District Court misapplied the law regarding the application of social security disability payments to child support when it applied payments first to the principal balance and then to accrued interest. As such, the Montana Supreme Court should reverse the District Court's conclusion that neither party owed back child support to the other.

The Montana Supreme Court is urged to award Margot her attorney's fees

and costs should she prevail on her appeal pursuant to the express terms of the parties' *Marital and Property Settlement Agreement.*

ARGUMENT

I. The District Court erred when it determined that a judicial admission precluded an award of child support prior to 2001.

A judicial admission is "an express waiver made in court by a party or his attorney conceding the truth of an alleged fact." *Conagra,* ¶ 43 (citing *Rasmussen v. Heebs Food Center*, 270 Mont. 492, 497, 893 P.2d 337, 340 (1995)). A judicial admission "has a conclusive effect upon the party who makes the admission" and no further evidence can be introduced to prove, disprove, or contradict the admitted fact. *Kohne v. Yost,* 250 Mont. 109, 112, 818 P.2d 360, 362 (1991) (citing 9 Wigmore, Evidence, §§ 2588, 2590 (Chadbourn rev. 1981).

For a judicial admission to be binding upon a party, the statement must be "an unequivocal statement of fact" rather than a conclusion of law or the expression of an opinion. *DeMars v. Carlstrom*, 285 Mont. 334, 337-38, 948 P.2d 246, 248-49 (1997). Judicial admissions must be applied with caution and a degree of skepticism. *A.T. Klemens & Son v. Reber Plumbing & Heating Co.*, 139 Mont. 115, 123-124, 360 P.2d 1005, 1009-1010 (1961).

Margot asserts that: (1) her proposed finding of fact does not constitute a judicial admission; and (2) proposed findings of fact should not serve as the basis for a judicial admission where the fact at issue was not adopted by the District

Court. Each issue is addressed in turn.

a. Margot's proposed finding of fact and her deposition do not constitute judicial admissions.

The District Court's conclusion of law was incorrect because Margot's proposed finding of fact, and the statement that she made during her deposition, do not constitute judicial admissions. A judicial admission can only occur where the statement is contrary to an essential fact which is at issue in a given proceeding. In this instance, the issues of child and medical support were never before the District Court because Scott failed to raise them in his October 30, 2000 *Motion for Modification of Parenting Plan.*

In *Conagra*, the Montana Supreme Court looked to an "often cited" Texas Supreme Court decision which focused on the "unequivocal standard" to be applied in the review of judicial admissions. *Conagra*, ¶ 45. In *Griffin v. Superior Insurance Company*, 161 Tex. 195, 338 S.W.2d 415, 419, the Texas Supreme Court set forth the following five-part rule for testing the sufficiency of a judicial admission:

> (1) that the declaration relied upon was made during the course of a judicial proceeding, **(2) that the statement is contrary to an essential fact embraced in the theory of recovery or defense asserted by the person giving the testimony**, (3) that the statement was deliberate, clear and unequivocal, (4) that giving of conclusive effect to the declaration will be consistent with public policy, and (5) the testimony must be such as relates to a fact upon which a judgment for the opposing party may be based.

Conagra, ¶ 45 (emphasis supplied).

The issues of child and medical support were never before the District Court when the judicial admissions allegedly occurred. Scott's October 30, 2000 *Motion to Amend Parenting Plan* asked the District Court to determine whether additional parenting time with his children was appropriate. Scott failed, however, to request the modification of his child and medical support obligations. As such, the issues of child and medical support were never before the District Court and therefore Margot's proposed finding of fact and her statement made during her deposition could not be contrary to an essential fact which was embraced in Scott's theory of recovery. They were not judicial admissions.

Furthermore, the District Court's determination that a judicial admission occurred is based upon a clearly erroneous finding of fact. In the District Court's June 23, 2009 *Order* the District Court states that "[o]n December 12, 2001, the Court entered Findings of Fact and Conclusions of Law resolving the parenting dispute concerning the children, **but left the child support at $200.00 per month."** Appendix 2 – June 23, 2009 *Order* at 2:6-9. However, the District Court's December 12, 2001 *Findings of Fact, Conclusions of Law, and Order*, which does not even reference child or medical support, contains no such finding! As such, the District Court's determination that a judicial admission occurred is not supported by the record and is therefore clearly erroneous.

The District Court's conclusion of law was incorrect because the issues of child and medical support were not related to an essential fact that was embraced in Margot's defense of Scott's *Motion to Amend Parenting Plan*. Similarly, the District Court's own findings of fact, upon which it bases its conclusion that a judicial admission occurred, was incorrect because the District Court never addressed child support in its December 12, 2001 *Findings of Fact, Conclusions of Law, and Order*. As such, the Montana Supreme Court should reverse the District Court's conclusion that Margot's proposed finding constituted a judicial admission.

b. Proposed findings of fact should not serve as the basis for a judicial admission where the fact at issue was not adopted by the District Court.

The District Court's conclusion of law was incorrect because the Court never adopted Margot's proposed finding in its December 12, 2001 *Findings of Fact Conclusions of Law, and Order*. Judicial admissions should not be permitted to occur in proposed findings of fact where the District Court does not adopt the proposed finding.

The Montana Supreme Court has held that "[j]udicial admissions may occur at any point during the litigation process" and that they may "arise during discovery, pleadings, opening statements, direct and cross-examination, as well as closing arguments." *Kohne* , 250 Mont. 112, 818 P.2d at 362 (citing *Lowe v. Kang*,

167 Ill.App.3d 772, 118 Ill.Dec. 552, 555, 521 N.E.2d 1245, 1248 (Ill.App.Ct.1988)). *Id.* However, the Montana Supreme Court has never examined whether judicial admissions may occur in proposed findings of fact and there is a split between how judicial admissions are treated at the Federal and State levels.

At the Federal level, proposed findings of fact cannot constitute judicial admissions as they are "no more than informal suggestions for the assistance of the court." *City of Cleveland v. Cleveland Electric Illuminating Co.*, 538 F. Supp. 1257, 1280 (D. Ohio 1981) (citing 9 Wright and Miller, Federal Practice and Procedure § 2578 at 704 (1971)); see also *Parker v. Stern & Co.*, 499 S.W.2d 397, 411 (Mo.1973) (holding that a proposed finding of fact in a prior related case pending in federal court did not constitute a judicial admission).

On the State level, proposed findings of fact have been permitted to constitute judicial admissions in limited circumstances. In *Stemper v. Stemper*, 415 N.W.2d 159 (1987), the South Dakota Supreme Court reversed its own decision to eliminate alimony in a dissolution of marriage proceeding where the husband's proposed finding of fact stated that he should pay alimony to the wife in the amount of $200.00 per month. *Stemper*, 415 N.W.2d. at 160.

In *Carson v. McMahan*, 215 Or. 38, 332 P.2d 84 (1958), the Oregon Supreme Court affirmed the District Court, in part, because the defendant consistently stated throughout the proceeding that the plaintiff had been paid in full

for his services as an attorney. *Carson*, 215 Or. at 44, 332 P.2d 86-87. However, in a proposed finding of fact submitted after trial, the defendant stated that the plaintiff should receive an additional $10,000 "to compensate him for favorable results obtained in litigation while associated" with the defendant. *Id.*

Margot's case is distinguishable from both *Stemper* and *Carson* because in each of those cases the proposed finding of fact that gave rise to the judicial admission was specifically adopted by the District Court. In this case, however, the District Court never adopted Margot's proposed finding of fact because the issues of child and medical support were never before the District Court in the first place. To allow a proposed finding that has not been adopted by the District Court to serve as the basis for a judicial admission circumvents the District Court's responsibility to do its own fact-finding and conclusion making.

The District Court's conclusion of law was incorrect because Margot's proposed finding was never adopted by the District Court in its December 12, 2001 *Findings of Fact Conclusions of Law, and Order*. As such, the Montana Supreme Court should reverse the District Court's conclusion that Margot's proposed finding constituted a judicial admission.

II. The District Court erred when it imposed sanctions for asserting a claim for back child support in light of the judicial admission.

In pertinent part, Rule 11 of the Montana Rules of Civil Procedure provides that:

> The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; **that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation**. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, **the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.**

(emphasis supplied).

The Montana Supreme Court has noted that Rule 11 provides grounds for sanctions in two instances:

> The first is found in the "frivolousness clause," which requires the imposition of sanctions if a pleading or other paper is not 1) well grounded in fact; or 2) warranted by existing law or a good faith argument for the extension, modification or reversal of existing law. The standard for determining whether a pleading has a sufficient factual or legal basis is reasonableness under the circumstances.
>
> The second ground for imposing sanctions is found in the "improper purpose clause." If a pleading or other paper is interposed for an improper purpose, such as harrassment, delay or increasing the cost of litigation, sanctions must be imposed. The standard for determining whether a party acted with an improper purpose is also an objective one, that is, reasonableness under the circumstances.

D'Agostino v. Swanson, 240 Mont. 435, 445, 784 P.2d 919, 925 (1989) (internal citations omitted).

The District Court's sanction is clearly erroneous because Margot's *Motion for Determination of Back Child and Medical Support Amount Due* was neither frivolous nor was it interposed for an improper purpose. As noted above, judicial admissions can only occur where a statement is contrary to an essential fact embraced in the theory of recovery. Scott failed to raise the issue of child support in his *Motion to Amend Parenting Plan*. As such, Margot's proposed finding was not a judicial admission and it cannot therefore serve as the basis for sanctions under Rule 11 of the Montana Rule of Civil Procedure.

Furthermore, even if Margot's proposed finding of fact did constitute a judicial admission, a good faith argument existed to bring the matter before the District Court. Not only have the Federal courts held that judicial admissions cannot occur in proposed findings of fact, the only instances in State courts where judicial admissions have been permitted in proposed findings is where the fact at issue was adopted by the District Court. Judicial admissions should not be permitted to occur in proposed findings of fact where the District Court did not adopt the specific finding. Such action circumvents the District Court's responsibility to do its own fact-finding and conclusion making. As such, a good faith basis existed for bringing the *Motion for Determination of Back Child and*

Medical Support Amount Due and Margot's proposed finding should not serve as the basis for sanctions under Rule 11 of the Montana Rule of Civil Procedure.

The District Court's sanction is clearly erroneous because Margot's *Motion for Determination of Back Child and Medical Support Amount Due* was neither frivolous nor was it interposed for an improper purpose. As such, the Montana Supreme Court should reverse the District Court's imposition of sanctions.

III. The District Court erred when it determined that neither party owed back child support.

The Montana Supreme Court has followed a majority of other jurisdictions in holding that social security disability payments may not be applied to child support arrearages before the start of a disability period. *In re the Marriage of Cowan*, 279 Mont. 491, 502-503, 928 P.2d 214, 221-222 (1996) (citing to A.R.M. 46.30.1542(1)(b)). The Montana Supreme Court has also held that unpaid child support becomes a judgment debt similar to any other money judgment and that payments must first be applied to interest, rather than to principal. *In re the Marriage of Hopper*, 1999 MT 310, ¶ 49, 297 Mont. 225, 991 P.2d 960; *Anderson v. Perkins*, 10 Mont. 154, 25 P. 92 (1890); See also *Williston on Contracts* § 72:20 (2008); 70 C.J.S., Payment § 65 (2008).

The District Court's conclusion that neither party owes back child support is incorrect because the District Court misapplied the law regarding the application of social security disability payments to child support. The District Court

determination that neither party owed child support to the other was based upon the analysis of Nicholas Bourdeau, Scott's expert witness. Appendix 2 – March 3, 2010 *Findings of Fact, Conclusions of Law, and Order.* As the District Court noted, Mr. Bourdeau's analysis was made in accordance with the District Court's prior conclusion that Scott's excess social security disability payments should be used to reduce his accrued arrears before the start of his disability period and that his social security payments should be applied **first** to the principal balance of any child support arrearage and **then** to any accrued interest. *Id* (emphasis supplied). Both conclusions are contrary to Montana law and, as a result, the determination that neither party owed back child support to the other is clearly erroneous.

The District Court's conclusion of law was incorrect because the District Court misapplied the law regarding the application of social security disability payments to child support. As such, the Montana Supreme Court should reverse the District Court's conclusion that neither party owed back child support to the other.

IV. Margot is entitled to her attorney's fees and costs incurred in this appeal.

The Montana Supreme Court has held that attorney's fee provisions contained within marital settlement agreements constitute an enforceable agreement. *Jensen v. Jensen*, 192 Mont. 547, 554, 629 P.2d 765, 769 (1981).

Here, Scott and Margot agreed that:

> The parties shall assume and pay their own attorney's fees incurred in the preparation of this Agreement or in conjunction with the dissolution of the marriage of the parties. **However, in any action to enforce or interpret and provision of this agreement, the prevailing party shall receive costs and attorney fees.**

Marital Property Settlement Agreement at VII (emphasis added).

Therefore, Margot asserts that should she prevail on appeal, she also should be awarded her attorney's fees and costs.

CONCLUSION

Margot requests that the Montana Supreme Court reverse the District Court's June 23, 2009 *Order* and that the matter be remanded for a hearing. Margot's proposed finding of fact did not constitute a judicial admission because the issues of child and medical support were never before the District Court when it issued its December 12, 2001 *Findings of Fact and Conclusions of Law, and Order* and because judicial admissions should not be permitted to occur in proposed findings of fact where the District Court does not adopt the proposed finding.

Margot further requests that the Montana Supreme Court reverse the District Court's March 3, 2010 *Findings of Fact, Conclusions of Law, and Order* and that the matter be remanded for a hearing. The District Court misapplied the law regarding the application of social security disability payments to child support.

Finally, Margot requests that Montana Supreme Court award her the

attorney's fees and costs that she has incurred in pursuing this appeal pursuant to the express terms of the parties' *Marital and Property Settlement Agreement*.

RESPECTFULLY SUBMITTED this 10th day of August, 2010.

P. MARS SCOTT LAW OFFICES

By: Thorin A. Geist

Thorin A. Geist

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(d) of the Montana Rules of Appellate Procedure, I certify that this *Appellant's Brief* is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word Professional Edition, is not more than 10,000 words, not averaging more than 280 words per page, excluding certificate of service and certificate of compliance.

DATED this 16th day of August, 2010.

P. MARS SCOTT LAW OFFICES

By: _____
Thorin A. Geist

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of August, 2010 a copy of this *Appellant's Brief* was served upon the following by depositing it in the U.S. Mail, postage prepaid:

Kenneth R. Dyrud
Dyrud Law Offices, P.C.
P.O. Box 9109
Missoula MT 59807

P. MARS SCOTT LAW OFFICES

By: Thorin A. Geist
Thorin A. Geist